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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,191	04/27/2005	Julio Cesar Ruiz Ballesteros	P040411	6955

26574 7590 06/12/2006

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EXAMINER

PAIK, SANG YEOP

ART UNIT	PAPER NUMBER
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3742

DATE MAILED: 06/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/511,191	Applicant(s) RUIZ BALLESTEROS ET AL.	
	Examiner Sang Y. Paik	Art Unit 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 7, 8, 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Rourke et al (US 6,078,728) in view of Flashinski et al (US 6,154,607) and Kennedy (US 5,695,692).

O'Rourke shows an evaporator having a base body with an integrated plug, a heating surface to provide heating to an active substance provided on a removable and slidable support. The base body has the U shape with a rear and a front portion which further has the aeration grills with the support fit between the rear and front portions. However, O'Rourke does not shows a PTC heating resistance and the support having two housings that are adapted to in size and shape to two different type of containers of the active substances.

Flashinski shows that it is known in the art to provide an evaporator device with a PTC heating element, and Flashinski further shows the active substance contained in a container that is a tablet and a tray having a volatile substance contained therein with a fragrance permeable membrane. Kennedy shows that it is known in the art to provide a volatile carrying support or case with housing sections that can accommodate varying sizes of the active substances (see Figures 1, 6 and 7).

In view of Flashinski and Kennedy, it would have been obvious to one ordinary skill in the art to adapt O'Rourke with the PTC heating element, which is known in the art to provide a

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self-regulating heating, to more uniformly heat the volatile active substances, and further adapt with a carrier having compartments wherein different shapes and size of active substances can be housed therein as O'Rourke allows to have different volatile substance at different selected regions in the removable and slidable support.

With respect to claim 10, the safety mechanism is shown by O'Rourke which shows the teeth established in the front end of lateral walls of the support (see Figures 1 and 3).

3. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Rourke in view of Flashinski and Kennedy as applied to claims 7, 8, 10 and 12 above, and further in view of Schroeder (US 4,725,712) and Shibahashi et al (US 5,558,700).

O'Rourke in view of Flashinski and Kennedy shows the device claimed except the thermochrome paint on the body.

Schroeder shows a fluorescent screen provided on the body of the evaporator device to indicate the function of the device. Shibahashi shows that it is well known in the art that a thermochrome or thermochromic materials provide fluorescent colors which can be used to indicate the operating temperature.

In view of Schroeder and Shibahashi, it would have been obvious to one of ordinary skill in the art to adapt O'Rourke, as modified by Flashinski and Kennedy, with a pattern made of the thermochrome fluorescent paint to visually indicate the functions of the device such as the operated temperature of the device with the varying fluorescent colors.

4. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Rourke in view of Flashinski and Kennedy as applied to claims 7, 8, 10 and 12 above, and further in view of Sprick (US 5,794,803) or Fuchs (US 5,078,288).

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O'Rourke in view of Flashinski and Kennedy shows the device claimed except the side surface of the casing or body being deformed to release the locking teeth.

Sprick and Fuchs show a well known locking safety mechanism with the locking teeth engage with the respective complementary locking teeth wherein the engaged teeth are released as the side of a casing or body is press deformed.

In view of Sprick or Fuchs, it would have been obvious to one of ordinary skill in the art to adapt O'Rourke, as modified by Flashinski and Kennedy, with the safety mechanism having the corresponding press release area to ensure safety from inadvertent release of the active substance support.

Response to Arguments

5. Applicant's arguments filed 3/17/06 have been fully considered but they are not persuasive.

The applicant argues that O'Rourke does not show the "removable" support. This argument is not deemed persuasive. It is noted on column 8, lines 10-17 of O'Rourke teaches that the support member can be moved through the path which would also the user to freely pass the support member.

The applicant argues there is no motivation to combine with Kennedy which does not show two housings where there is no teaching or possibility of varying size and shape of the pockets. It is noted that there is no claim recitation of varying the size and shape of the pockets but of the different types of containers of the active substance. Kennedy clearly shows that its container support has housings or sections that allows accommodating various sizes and shape of the fragrant materials/containers. Kennedy clearly meets the claimed support with at least two

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housings, and there is no teaching of Kennedy that would be contrary to the present claimed invention as argued by the applicant. In view of Kennedy which shows the support having different housings or sections that allows to house different volatile materials therein, it would have been obvious to one of ordinary skill in the art to modify the support of the O'Rourke with the support having sections or housings that would be capable of accommodating different volatile materials/containers to give off different fragrances.

With respect to the recited containers, it is noted that such recited elements go to the materials and articles worked upon by the apparatus device which does not limit the patentability of the apparatus claims (MPEP 2115). It is also noted, however, that Flashinski, which is applied to teach the PTC heating element, shows that it is also known in the art to provide a volatile substance contained in a container that is a tablet and a tray with a fragrance permeable membrane.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sang Y. Paik whose telephone number is 571-272-4783. The examiner can normally be reached on M-F (9:00-4:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 571-272-4777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Sang Y Paik
Primary Examiner
Art Unit 3742

syp